

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 16861A
[Redacted],	)	
	)	DECISION
Petitioners.	)	
_____	)	

On July 8, 2002, the Tax Discovery Bureau of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NOD) to [Redacted](taxpayers), proposing income tax, penalty and interest for the years 1997 and 1999 in the total amount of \$7,686.

On July 11, 2002, a timely protest and petition for redetermination was received from [Redacted] (husband). An informal hearing has not been requested. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision modifying the NOD.

On September 26, 2001, the Tax Discovery Bureau sent a letter with a questionnaire to the taxpayers to help the Commission properly determine the taxpayers' filing requirement. The taxpayers did not respond to this letter.

The Commission issued a NOD on February 25, 2002 to the taxpayers based on their income information [Redacted]. A joint filing status was designated for the taxpayers in the NOD. The taxpayers had not filed their federal or state income tax returns for the years in question and, therefore, had not made the election to file joint returns.

In the husband's protest letter received on April 29, 2002, he requested a 30-day extension to file the 1997 and 1999 income tax returns. He requested copies of W-2s for himself and his wife to aid his tax preparer.

In a letter dated July 11, 2002 and received August 28, 2002, [Redacted] (wife) stated that she had filed her part-year resident return for 1999 and was working on filing her 1997 tax return.

The wife's 1999 Idaho income tax return was included with the letter. The wife[Redacted]filed her 1999 income tax return using a head-of-household filing status and only reported the income she earned.

On December 4, 2002, the Tax Enforcement Specialist sent the wife a letter which stated that the NOD for tax year 1999 only should be cancelled.

The tax year 1999 will not be addressed any further in this decision.

The tax enforcement specialist sent the case to the Legal/Tax Policy Division so that the taxpayers could further pursue their rights to appeal the NOD.

On January 28, 2003, the Tax Policy Specialist (policy specialist) sent a hearing rights letter to the taxpayers to inform them of their alternatives for redetermining a protested deficiency determination. A follow-up letter was sent on March 5, 2003.

On April 4, 2003, the wife also[Redacted]filed her 1997 income tax return using a head-of-household filing status and only reported the income she earned.

The taxpayers were married for the entire year of 1997 and were living together for part of that year. Under Idaho law, earnings of a spouse are presumed to be community property. I.C. § 32-906(1); Martsch v. Martsch, 103 Idaho 142, 645 P.2d 882 (1982). This is true even if the husband and wife are separated and living apart. Suter v. Suter, 97 Idaho 461, 546 P.2d 1169 (1976) (finding Idaho Code § 32-902 unconstitutional); Desfosses v. Desfosses, 120 Idaho 354, 815 P.2d 1094 (Ct. App. 1991). Thus, under Idaho law, only death or a legal divorce will disband the community.

Generally speaking, the federal income tax code does not establish whether income earned during the marriage is separate or community income. Instead, state law will determine the separate or community character of income earned during marriage. See generally Poe v. Seaborn, 282 U.S. 101, 51 S.Ct. 58 (1930) (Applying Washington's community property law,  
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[Redacted]

the U.S. Supreme Court held that husband and wife were entitled to file separate federal individual income tax returns, each treating one-half of the community income as his or her respective incomes.); United States v. Mitchell, 403 U.S. 190, 91 S.Ct. 1763 (1971) (Under Louisiana community property law, each spouse “has a vested title in, and is the owner of, a half share of the community income” and is, therefore, subject to federal income tax on that half share.).

Idaho Code § 63-3002 stated in pertinent part:

It is the intent of the legislature by the adoption of this act, insofar as possible to make the provisions of the Idaho act identical to the provisions of the Federal Internal Revenue Code relating to the measurement of taxable income, to the end that taxable income reported each taxable year by a taxpayer to the internal revenue service shall be the identical sum reported to this state, subject only to modifications contained in the Idaho law . . .

[Redacted] has not provided the Commission with a contrary result to the determination of his income based on income information received from the IRS and Idaho community property laws.

Therefore, the Commission must uphold the deficiency as modified.

WHEREFORE, the Notice of Deficiency Determination dated July 8, 2002, as MODIFIED, is hereby APPROVED, AFFIRMED and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer, [Redacted][Redacted], pay the following taxes, penalty and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1997	\$614	\$154	\$243	\$1,011

Interest is computed through October 16, 2003.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is enclosed with this decision.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2003.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2003, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

[Redacted]